

Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| Calling Party Pays Service Option |) | WT Docket No. 97-207 |
| in the Commercial Mobile Radio Services |) | |

REPLY COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

Introduction and Summary

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, submits these reply comments in response to the issues raised in the Commission's Notice of Inquiry.¹ Omnipoint has developed a technically workable Calling Party Pays ("CPP") system but cannot implement it until Local Exchange Carriers ("LECs") permit database access and agree to bill for CPP charges.

Omnipoint notes that the commenting parties generally agree that the Commission should impose neither a requirement that Commercial Mobile Radio Service ("CMRS") carriers must provide a CPP service option to their customers, nor a requirement that LECs provide a commercial CPP service offering to CMRS carriers, rather deferring to forces of the marketplace.² Omnipoint herein reiterates its position that the Commission should require Local Exchange Carriers to provide the essential elements of any CMRS

¹ Calling Party Pays Service Option in the Commercial Mobile Radio Services, Notice of Inquiry, FCC 97-341, WT Docket No. 97-207 (Sept. 25, 1997; rel. Oct. 23, 1997) [hereinafter Notice of Inquiry].

² See, e.g., Bell Atlantic Comments at 6-7; BellSouth Comments at 2; GTE Comments at 2; SBC Comments at 9.

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CPP service option, and that the Commission should allocate separate Numbering Plan Area ("NPA") codes to each national scope CMRS carrier proposing to offer a CPP service option.

Discussion

I. The Commission Should Take Actions Necessary To Ensure CMRS CPP Service Providers Are Able to Bill CPP Charges Directly to LEC Telephone Bills.

CMRS will not emerge as a viable competitor to wireline, nor will CPP be a viable service option, while incumbent carriers retain monopolistic control over the key elements of competition and while they continue to place regulatory and legal hurdles in the path of competitors simply to stall the process of competition.³ CPP cannot be a viable service until calling parties are capable of being billed on a national basis. The efforts of some carriers to stall this process is strikingly similar to the tactics that have been employed to stall equal access, collocation and, even now, number portability with CMRS carriers. Competition cannot develop if the necessary tools are not provided.

At least one commenter has stated that there is no need for national uniformity for CPP to develop.⁴ The lack of national uniformity, however, has contributed significantly to failures of prior CPP trials.⁵ Without a nationally uniform service, CMRS customers

³ While at least one commenter states that "CMRS is emerging as a viable alternative to the wireline service provided by LECs," BellSouth Comments at 2, CMRS cannot do so until it is able to share equally in the competitive arena occupied by wireline carriers, through number portability and the ability to offer a truly national scope CPP service option.

⁴ SBC Comments at 7.

⁵ The various references in the comments to failed CPP trials and the current lack of evidence for increased demand (*see, e.g.*, BellSouth Comments at 3; GTE Comments at 8; SBC Comments at 10) are of little empirical value as there has been no CPP service

will face inevitable confusion in the roaming environment of CMRS carriers. Furthermore, more often than not CMRS carriers operate in regional markets that cross state boundaries, and their CPP service options will not be localized service offerings. Rather, CMRS carriers will need to be able to offer their customers the ability to receive incoming CPP calls from anywhere in the United States. Omnipoint urges the Commission to allocate separate Numbering Plan Area ("NPA") codes to each national scope CMRS carrier proposing to offer a CPP service option.⁶

In addition to allocating CPP NPAs, the Commission should act immediately to implement an interim CPP billing and collection solution that would require all LECs to: (a) accept from CMRS carriers, on a nondiscriminatory basis, information relating to CMRS charges incurred by the LECs' customers, (b) include such CMRS charges on their customers' bills and (c) remit all funds collected in connection with such CMRS charges to the CMRS provider. The Commission should thereafter require all LECs to provide a least-cost wholesale billing and collection service on a nondiscriminatory "most favored customer" basis to any interested CMRS provider, and to promptly remit to the CMRS provider all collected amounts in excess of the LEC's costs incurred in:

(Footnote continued from previous page)

option to date that has met the threshold functional requirements for a viable CPP service option: seamless nationwide availability. As U S West points out, "where a . . . CPP subscriber receives a call from a phone served by a non-participating LEC or in a non-participating state, the CPP option simply does not work." U S West Comments at 5.

⁶ See Omnipoint Comments at 3. Omnipoint proposes that each such NPA be restricted exclusively to use by CMRS providers solely in connection with CPP service options. We suggest that the Commission establish a threshold for a CMRS carrier to receive a dedicated NPA of a covered population of 50 million; CMRS carriers not meeting that threshold level could share dedicated NPAs.

(i) carrying the call to the CMRS provider and (ii) providing the billing and collection service.⁷

Omnipoint disagrees strongly with comments that the telecommunications service of billing for CPP is “not subject to regulation under Title II of the Act” and that there exists sufficient competition for LEC billing services.⁸ In fact, LECs have bottleneck control over the access to a LEC customer’s telephone bill; they should be mandated to open that bottleneck and allow CMRS carriers to provide effective competition. Furthermore, contrary to the indications of at least one commenter,⁹ implementation of CPP billing will not place an “enormous burden” on any LECs, and LECs need not install any hardware or software to do so—the existing systems that allow interexchange carrier (“IXC”) billing are all that they require. One LEC commenter shows its spots, suggesting that LEC customers may cut back on the LEC services that they otherwise would purchase due to CPP charges.¹⁰ This is the inevitable result of competition, and exactly what the LECs seek to avoid.

One commenter states the CMRS carriers are not entitled to billing information as an unbundled network element.¹¹ Currently, however, LECs provide bundled CPP product offerings which include the element of customer billing. The Commission should require that such product offerings, and particularly customer billing and access to LIDB information, be unbundled and offered to all telecommunications carriers “on rates,

⁷ See Omnipoint Comments at 10-11.

⁸ Bell Atlantic Comments at 7-8.

⁹ Bay Springs et al. Comments at 9.

¹⁰ SBC Comments at 17.

¹¹ Bell Atlantic Comments at 10.

terms, and conditions that are just, reasonable, and non-discriminatory. . . .”¹²

Furthermore, the Commission should ensure that LECs not offer unbundled elements for a sum cost that is greater than the current cost of the whole.

LECs also have stated that billing name and address (“BNA”) constitutes an adequate alternative to their provision of necessary direct access to their customers’ bills.¹³ A CPP calling party may place only one call to any CPP subscriber during a billing period, making the cost for the CMRS carrier to bill directly to that calling party far in excess of the revenue that the CMRS carrier is owed. Of course, that customer already receives a LEC telephone bill. Therefore, due to its prohibitively high cost, third party direct billing is not a competitively effective solution for CPP, nor an acceptable substitute to direct customer billing for CMRS carriers.

Omnipoint agrees with GTE that reciprocal compensation cannot serve as an adequate mechanism for CPP cost recovery.¹⁴ CMRS carriers are not compensated for all of their costs through reciprocal compensation. Despite having higher costs to complete calls, most CMRS carriers have opted to accept incumbent LECs’ reciprocal compensation rates pursuant to symmetrical compensation arrangements.¹⁵

¹² 47 U.S.C. § 251(c)(3).

¹³ SBC Comments at 5, 17; *see also* Bell Atlantic Comments at 10.

¹⁴ GTE Comments at note 4.

¹⁵ Symmetrical compensation arrangements are those in which the rate paid by an incumbent LEC to another telecommunications carrier for transport and termination of traffic originated by the incumbent LEC is the same as the rate the incumbent LEC charges to transport and terminate traffic originated by the other telecommunications carrier.

Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499 at ¶ 1069 (1996), modified in part on recon., 11 FCC Rcd. 13042 (1996), vacated in part, Iowa Util. Bd v. F.C.C., 120 F.3d 753 (8th Cir. 1997).

II. The Commission Should Clarify That the Market Will Ensure That the Rates Charged By CMRS Carriers for CPP Calls Are Reasonable and Customer-Oriented and That Such Rates Are Not Subject to State Regulation.

The Commission should take this opportunity to state with finality that CMRS carriers may set, without regulation or intervention from other parties, the CPP charges for incoming CPP calls. Some commenters have argued that CPP charges charged to calling parties may exceed the actual cost of terminating that call.¹⁶ To be viable, CPP service options will be priced at a reasonable level that callers will find acceptable to pay, or those callers would quickly stop calling. Similarly, CMRS customers will not choose a CPP service option if the calling party rate is unreasonable because such a rate would reduce the likelihood of receiving calls to the CPP telephone number. This determination, however, must be left entirely to the marketplace, and should not be subject to interference.

Several wireline carriers claim that their customers are accustomed to the flat rates of LEC local calling area plans, and that CPP charges will be different and confusing to their customers.¹⁷ Of course, a CPP NPA code for each CMRS operator with national scope, as Omnipoint has suggested, would resolve customer confusion: calling parties are already fully aware that 10 digit long-distance calls are based on metered pricing. Moreover, the comparison between CMRS CPP and LEC local calling plans, and speculation that customers will not grasp the differences between the two services, are wholly inappropriate. CMRS CPP applies to a much larger calling area than LEC local

¹⁶ Bay Springs et al. Comments at 4.

¹⁷ See BellSouth Comments at 5; Bay Springs et al. Comments at 7; SBC Comments at 8.

calling plans, which typically apply only to wireline callers within contiguous wireline rate centers. By contrast, CMRS calling plans are quite often interstate, interLATA, and cover many wireline rate center areas.¹⁸ In addition, the LECs' position on customer confusion is demonstrably untrue: customers fully comprehend metered pricing in the context of wireline long-distance service, LEC intraLATA toll service, wireline-affiliated cellular service, LEC ISDN services (and, for that matter, utilities such as electric and gas service). Finally, Omnipoint notes that the wireline carriers actually have created—and continue to perpetuate—flat rate local service structures. If their own flat rate local plans -- adopted in a prior era of stable local monopoly -- would, in fact, be threatened by CMRS CPP competition, then it is an argument that the Commission certainly should not countenance.

III. Implementation Issues Are Resolved Through National Implementation and Industry Standards.

Several commenters have raised concerns regarding leakage of CPP calls.¹⁹ Major sources of leakage in a nationwide system can be eliminated by the Commission's requiring all LECs to provide accommodation of billing for CPP because most leakage is identified with interLATA and interstate calls.²⁰ Other sources can be accommodated by alternative billing mechanisms, such as credit card transactions. Where an incoming CPP is not able to be billed, either via the incoming caller's serving LEC or an alternative

¹⁸ Because CMRS CPP is an inherently interstate wireless service, Omnipoint strongly urges the Commission to declare that state regulation of CPP is barred by Sections 2(b) and 332 of the Communications Act.

¹⁹ Bell Atlantic Comments at 3; BellSouth Comments at 5; GTE Comments at 14; U S West Comments at 5-6.

²⁰ See discussion *supra* Part II.A.

payment mechanism, CMRS carriers must be free to prevent completion of the call, as is the norm with other telecommunications services.


Omnipoint believes that the Commission should endorse industry standards setting efforts for CPP. Omnipoint intends to participate actively in such efforts. Omnipoint is surprised that it has not been invited to participate in the National Calling Party Pays Forum referenced in at least one comment,²¹ and questions whether such a coalition currently includes any potential CMRS CPP providers (other than those controlled by LECs). The Commission can take the lead by establishing a CPP NPA and mandating LEC billing.

Conclusion

The Commission should require Local Exchange Carriers to provide the essential elements of any CMRS CPP service option, and that the Commission should allocate separate Numbering Plan Area ("NPA") codes to each national scope CMRS carrier proposing to offer a CPP service option.

Respectfully submitted,

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²¹ See U S West Comments at 7.